IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5407 of 1990

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINABEN R RABARA

Versus

STATE OF GUJARAT

Appearance:

MR HRIDAY BUCH for ND NANAVATI for Petitioner No. 1-9

MS ARCHANA RAVAL, AGP, for Respondent No. 1-2

MR PM RAVAL for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 16/09/2003

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is filed by the petitioners who were selected after interviews by the Staff Selection

Committee of the respondent no.4 in May 1990. The selection list was ordered to be scrapped by the Director of Primary Education vide his order dated 12/13th of July 1990 which is at Annexure-B to the petition. Upon being informed about the same by letter dated 17.7.1990 the petitioners appear to have approached this Court on 25th July 1990. After the issuance of notice and direction to maintain status quo by way of ad interim relief the petition came to be admitted on 14th September 1990 and interim relief also appears to have been granted.

2. It has to be noted that in the aforesaid order dated 14.9.1990 the original words appear to be "Leave to amend. Rule. Interim relief in terms of prayer" and thereafter the word "14(D)" appears to have been added in different hand. Para 14(D) reads as under:

> "(D) In the alternative, Your Lordships will be pleased to stay the implementation and/or operation and/or execution of the orders passed by respondent nos.2 and 3 respectively dt.12th/13th July 1990 and 17th July 1990, Annexures B and A respectively and further be pleased to direct the respondents to make appointment as per the select list prepared by the Staff Selection Committee of the respondent no.4-District Primary Education Committee, produced at Annexure-C to this petition forthwith;"

Be that as it may, none of the respondents appears to have made any attempt for hearing of the petition, vacation of the interim relief or even filing of a reply or affidavit. Under such circumstances, the Court on 19.4.2000 made an order directing respondent no.3 to remain personally present in the Court with the relevant record of the matter. It was noted that at that time reply to the petition was not filed by the respondents, and looking to the dispute which has arisen in the case reply was required to be filed. However, for the reasons best known to the respondents the reply was not filed.

3. The fact remains that the petition remains absolutely uncontroverted till today since its inception. Learned counsel Mr. Buch appearing for the petitioners stated on instructions that the petitioners were in the meantime appointed, confirmed and even promoted on higher post. It was therefore submitted that the petitioners having been duly selected and appointed under the order of this court, the situation may not be disturbed and the petition was required to be allowed to that extent. Para

14(D) of the petition as aforesaid having prayed for mandatory relief directing the respondents to make appointment as per the select list prepared by the Staff Selection Committee of the respondent no.4 and the same having been considered to have been granted as above, the petition as on today practically stands allowed.

4. Even as no-one appeared for respondent no.3 and
4. Ms. Archana Raval, learned AGP submitted on behalf of the respondent no.1 that the impugned order dated 12/13th July 1990 at Annexure-B was legal and binding upon the District Primary Education Officer. Except that bare objection the respondents have not cared to even produce or read the guidelines dated 31.7.1962 referred to in the aforesaid order on the basis of which the selection list was cancelled. Thus, the respondents appear to have, in effect, abandoned their objections to the selection list and proceeded not only to appoint the petitioners under an order of this Court, but went on to confirm and promote the petitioners in due course as stated by the learned counsel. It also has to be noted that the respondent nos.3 and 4 have also not cared to either defend the selection list or the impugned order.

5. In these facts and circumstances, the petition has to be allowed mainly on the ground of acquiescence and absence of any substantial objection raised by the respondents. Accordingly the impugned order at Annexure-B directing to revoke the selection list as also the impugned order at Annexure-A are quashed and set aside. The petition is accordingly allowed to the aforesaid extent. Rule is made absolute with no order as to costs.

[D.H. WAGHELA J.]